# In the Supreme Court of the United States

OCTOBER TERM, 1977

**No. 77-987**

C. JOHN FORGE, JR., JAMES OLSON,
RICHARD LARSON,
*Appellants,*

VS.

STATE OF MINNESOTA,
*Appellee.*

ON APPEAL FROM THE SUPREME COURT
OF THE STATE OF MINNESOTA

## REPLY BRIEF

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## REPLY BRIEF

### I

**The Case of Morton v. Mancari, 417 U.S. 535 (1974) Does Not Provide Any Authority for a State to Legislate Racially Preferential Treatment for Its Indian Citizens.**

The case of *Morton* v. *Mancari*, 417 U.S. 537, 41 L.Ed.2d 290, 94 S.Ct. 2474, does not grant to the states any rights of legislation actually or impliedly. This case deals solely with the question of the right of the United States Congress to specify preferential employment to those of Indian

descent within the federal government's Bureau of Indian Affairs.

This case turns entirely upon the federal government's obligations toward its wards, the Indian people within the United States, a question which is not even remotely connected to the case at bar. This present controversy relates instead upon the state's right to legislate in an area and body of laws previously wholly pre-empted by the federal government.

The state has clearly stated their proposition on page 18 of their suggestions in the following statement:

> "Now if the federal government may enact or enter in treaties which create or preserve unique Indian rights without raising equal protection issues in respect to non-Indians, *then surely,* assuming there is no state constitutional prohibition, *a state may recognize those rights and take reasonable steps to minimize adverse impacts on state interests, also without encountering equal protection problems.*" (Emphasis ours)

The position here taken by the State of Minnesota is directly contra to that taken by the State of Washington. The latter State expressed their opinion in the case of *Puget Sound Gillnetters Assn.* v. *Moos,* 565 P.2d 1151 (1977) wherein the Supreme Court of Washington said:

> "Thus, they (Indians) can neither be denied equal protection of the laws nor granted special privileges and immunities. . . . Distinctions between fishermen based upon their race or ethnic background are not proper. Treaties protecting Indian rights in the state's natural resources should be read so as to harmonize their provisions with constitutional mandates if this can be done."



See also *Purse Seine Vessel Owners Assn.* v. *Moos,* 567 P.2d 205 (1977).

Thus it is clear that the provisions of the Fourteenth Amendment means one thing in the State of Washington and quite another in the State of Minnesota. Only this Court can interpret the constitution so as to apply it equally in the two jurisdictions.

It should be of further note that the practical effect of the settlement agreement was to recognize the claims of the Indians to the exclusive fishing, hunting and ricing rights within the territory in question, exclusive rights that the court had already denied existed. (See *Leech Lake Band of Chippewa Indians* v. *Herbst,* 334 F. Supp. 1001, D. Minn. 1971)

It is clear from a review of the authorities that the state has equated their rights in the area of Indian law with those of the federal government. The authorities cited generally deal with attempts by the state to tax, regulate, and otherwise legislate within Indian territory, acts that have uniformly been rejected by the courts, but the state's purpose here being beneficent instead of regulatory justifies their intrusion into this area of the law.

Appellants do not in any way contest the right of the federal government to deal with their Indian wards, they simply suggest that the state's intrusion into this area will only increase the confusion already permeating this area of the law.

## II

**The Case of United States v. Mazurie, 419 U.S. 544 Does Not Grant to the States Any Authority to Permit Recognition of Indian Tribes As Independent Sovereigns Operating Within the States.**

Counsel for the State of Minnesota has effectively admitted the necessity of this court defining the rights of a state to enact laws regarding the Indian citizens within the boundaries of the States. The State of Minnesota has equated grant of the United States Congress to the Indian people of sovereignty over the internal affairs of the tribe, with that of an independent nation operating within the states themselves. The state has further equated the right of the regulation of commerce with the "internal and social relations of tribal life" as set out in the Mazurie case with that of total sovereignty which includes the right of assessment against non-Indians, the right to control the resource and other instances of sovereignty recognized in the settlement agreement before this court in this case.

The position of the state is clearly set out in their suggestions at page 23 where they state:

> "But there is no such constitutional prohibition against such agreements. Congressional power over matters involving Indians is pre-emptive rather than exclusive."

This reflects not only the thinking of the State of Minnesota but the thinking of the Indian authorities throughout the Nation.

One would need to be totally ignorant of the trend in Indian litigation not to recognize that the Indian leaders are case by case, jurisdiction by jurisdiction, accumulating



a body of law with the ultimate purpose of declaring themselves to be wholly independent sovereigns capable of autonomous actions, a proposition that at some time will be required to be faced by this court.

However, assuming that they are possessed of independent sovereignty, such sovereignty would preclude the state's right to enter into agreements such as those at bar. Article I, Section 10 of the United States Constitution states:

> *"No state shall enter into any treaty, alliance or confederation;* grant letters of marque and reprisal; coin money; emit bills of credit; make anything but gold and silver coin a tender in payment of debts; pass any bill of attainder, ex post facto law, or law impairing the obligation of contracts; or grant any title of nobility. . . . " (Emphasis mine)

A treaty has been defined as a contract between independent nations. *Anthony* v. *Veatch,* (1950) 220 P.2d 493, App. denied 340 U.S. 923, 95 L.Ed. 667, 71 S.Ct. 499. This same case is authority for the proposition of the appellants that states have no right to enter into contracts with independent nations.

Thus, if, as Minnesota urges, the Indian tribes are independent sovereign nations within the United States, the states are prohibited by the Constitution from entering into contracts except as specifically enumerated by federal laws with the Indian tribes. No such law exists in the case at bar.

Respectfully submitted,

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